OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 99-6 August 16, 1999

TO: All Regional Directors, Officers-in-Charge
And Resident Officers

FROM: Fred Feinstein, General Counsel

SUBJECT: Best Practice C Case Report

I am very pleased to issue this report which codifies many of the best practices currently being used by some or all of our field offices in the processing of unfair labor practice cases. This report was compiled by a field committee made up of employees, supervisors and managers representing offices of varying sizes, with different travel requirements, resources and geography. They were charged with the task of uncovering and considering the practices used in the field to investigate ULP cases and deciding whether to recommend them to every office. The diverse needs and attributes of field offices across the country are reflected in the conclusions reached and the recommendations provided by the Committee.[1] Though much of the Committee's work was conducted during the Agency's most difficult budgetary times, the Committee concluded that its mission was to identify the most efficient and effective use of resources in the investigation and litigation of unfair labor practices notwithstanding budgetary concerns.

As you may recall, the Committee distributed a comprehensive survey tracking the processing of unfair labor practices in every field office. The surveys were completed by regional management, local unions and unit employees. The Committee reviewed and analyzed the responses to the survey and from the data compiled prepared the attached report.

The report uses two terms to identify those practices which the Committee agreed should be shared with the field. The first is the term **best practice**. That term designates those practices which should normally be adopted in your Region absent good cause or special operating needs. These are practices which clearly effectuate the most efficient and effective case processing to achieve the General Counsel's stated goals. All **best practices** are bolded in the report and are listed in a summary included as Attachment A.

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[1] The Committee consisted of Robert H. Miller, Regional Director Region 20; William C. Schaub, Jr., Regional Director Region 7; Karen P. Fernbach, Regional Attorney Region 2; Bruce I. Friend, Assistant to the Regional Director Region 32; Dorothy D. Wilson, Deputy Regional Attorney Region 14; James C. Peck, Supervisory Field Examiner Region 4; Michael Cooperman, Field Attorney Region 27; D. Bruce Hill, Field Examiner Region 33; Patrick K. Labadie, Field Examiner Region 7; Anne G. Purcell, Deputy Associate General Counsel; Charles L. Posner, Deputy Assistant General Counsel, Division of Operations-Management.

The second term is **practice worthy of consideration**. This term designates a practice which the Committee believes warrants serious consideration and assessment as to whether it will enhance casehandling in your Region. The Committee recognized that there may be alternative acceptable practices already in place and therefore not all practices worthy of consideration will necessarily be implemented in each Region.

In the area of the appropriate utilization of lightening the load techniques, and, in particular, the use of telephone affidavits and questionnaires, the Committee was unable to reach consensus. I have determined that it is appropriate to continue the lighten the load practices introduced in the Impact Analysis Report. (See pp. 3-4 of Best Practices Report). This is an area which may warrant further consideration and I look forward to receiving further input from the Regional Directors at the Regional Directors conference and the Best Practices Committee on these challenging questions.

Throughout the report there are references to practices which will be impacted by new technological resources. The Committee recognized that the initiation of the CATS system in a given Region may affect whether the Region desires to implement a particular practice. Thus, if CATS will obviate the need for implementing a practice and the CATS system is scheduled to be implemented in your Region in the next few months, it may not be desirable to implement the recommended practice. On the other hand, if CATS is not scheduled for implementation for more than a year, it may be worthwhile to consider the practice. Further, even though a practice involves technology, CATS may be irrelevant to the implementation of the practice.

I have attached one copy of this report. Please share the report with your managers and supervisors as well as the Local NLRB Union and your employees. I urge you to consult and/or bargain, as appropriate, with your local union regarding those practices which the Region is considering. Thereafter, you should schedule a staff meeting to discuss those best practices which the Region will be adopting. The Division of Operations-Management will be consulting with Regions to assess which best practices and practices worthy of consideration have been adopted.

The Best Practices C Case Committee intends to continue its work and will continue to consider new best practices and practices worthy of consideration for unfair labor practice cases. The Committee plans to make an annual inquiry as to new practices initiated in the field, so that it can be decided whether there are additional practices that should be shared. In this regard, if you have an idea that you would like the committee to consider, please contact Charles Posner, Deputy Assistant General Counsel, Operations-Management (202) 273-2893. My thanks to all of the Committee members for their hard work and a job well done.

F. F.

Attachment

cc: NLRBU

Release to the Public MEMORANDUM GC 99-6

TABLE OF CONTENTS

TOPIC	PAGE
Docketing, Categorizing and Assigning C Cases	1
Assignment of Cases/Categorization of Cases	1
Organization of Files	2
Transfer of Docketing and Other Support Staff Work	2
Conducting C Case Investigations	2
Face-to-Face Affidavits	3
Telephone Affidavits and Questionnaires	3
Dismissal for Failure to Cooperate in Questionnaire Cases	4
Letter to Charging Party	5
Clustering of Cases	5
Screen Agendas	6
Monitoring Case Status	6
Making C Case Determinations	7
Delegation of Authority/Levels of Review	7
Level of Pre-Decisional Preparation	8
Other Practices	9
Implementing C Case Determinations	10
Extensive Use of Fax	10
Use of Oral Withdrawals	10
Short Form Dismissal as Default method	11
Use of Standard Letters	11
Use of Templates	11
Prompt Implementation of Determinations	12
15-Day Lead Time for Issuance of Complaint	12
Sending Out Settlement Agreements to Parties	12
Sharing Settlement Agreement Language	12
Settlement Procedures	13
Settlement Coordinator	13
Participation of Upper Management	13
Review and Assessment of Settlement Prospects	13
Pre-Trial Conferences	14
Trial Assignments and Trial Work	14
Scheduling of Trial Assignments	14
Assignment of Trial Attorney	14
Subpoenas	15

TOPIC	PAGE
10(j), 10(l) and Other District Court Litigation	15
Assignment of Work	15
Maintenance of Injunction Files	15
Techniques for Litigating Injunction Cases	16
Support Staff Function	16
Consideration of Injunction Matters in Pre-Agenda Minutes or Reports	16
Preparation of 10(j) Submissions to Advice	16
Expedited Hearings	17
Utilization of Technology in Casehandling	17
Maximizing Efficient Use of Computer Technology	17
Templates	17
Saving Significant Documents/Information	18
Modems	19
Manuals on Common Drive	19
Use of Scanners	19
Use of Support Staff in Casehandling	19
Use of Teams/Team Approach	20
Training Techniques	21
Deferred Cases	22
Automating the IO Process	23
Other Aspects of Processing C Cases	23
Staff Recognition	23
Communications with the Bar and Public	23
Summary of C Case Best Practices	Attachment A
Sample Investigation Completion Report (ICR)	Attachment B
Sample Form for Use with Oral Withdrawal	Attachment C
Sample Standard Letter Seeking Withdrawal	Attachment D
Sample Letter Transmitting Settlement Agreement to Parties	Attachment E

Sample Script for Automated Phone Answering Attachment F

DOCKETING, CATEGORIZING AND ASSIGNING C CASES

The Committee reviewed regional practices and procedures for distributing cases among agents, categorizing and recategorizing cases, and systems for organizing files.

Assignment of Cases/Categorization of Cases

The Committee concluded that it is a best practice to submit to the Board agent assigned to the case a copy of the charge, immediately upon filing of the charge (as opposed to waiting for docketing and file preparation).

The following methods for assigning and categorizing cases were determined to be **practices worthy of consideration**:

a). ARD assigns categorization at the time the charge is filed.

b). Docket clerk provides ARD with charge, list of prior cases (pending and closed), and related IO material. ARD then assigns the case to the supervisor who categorizes and assigns cases.

c). ARD calls charging party when assigning the case if there are any questions about categorization; if still in doubt, assigns higher category until more facts are developed.

d). One supervisor/manager categorizes cases, groups cases by geography, parties and issues, and makes assignments.

e). ARD in Region 14 assigns cases to teams based on knowledge of pending investigations, trials, hearings, DDE's and R case work. Knowledge is based on a case list showing case name and number, date filed, supervisor, agent, category, overage date, determination and date, notes about the status of the assignments such as deadlines to the parties, 10(j) request, related cases, and a "factor" rating of 1 – 6 which is based on complexity, status and priority of the case. The number of assignments, as well as the total "factor" rating for each agent is considered in making the assignment.

f). Daily meetings of management during which case assignments are made and cases categorized.

g). For IO cases where charging party is in the office, Information Officer gets case number from docketing, gives signed charge to the ARD who assigns the category and immediately assigns to the investigating team. IO takes the charge to the team supervisor who immediately assigns to an agent who then arranges with the charging party for presentation of evidence, the same day if possible.

Organization of Files

The Committee concluded that it is a best practice to include on the case file the impact analysis category and the due date of the case. This allows easy reference to the priority of the case and the time frame within which the case is to be reported.

The Committee concluded that there is no one best way to organize investigative files. However, files should be organized in such a way that allows for easy review and or retrieval of information. Set forth below are some of the better ideas presented to the Committee for organizing files:

a). Some regions use a four-section file. From left to right, section 1 is for all formal documents; section 2 is for file notes, phone logs, case reports, and agenda minutes; section 3 is for affidavits; and section 4 is for all correspondence and documentary evidence.

b). In another region, disks are placed in every C case file on which the agent keeps a running history of significant events. This provides a readily available source for complaints, affidavits, agenda outlines, summary reports, settlements, etc.

c). Another file organization system is that all public documents such as the charge, docketing letters, notices of appearance and service sheet, complaints and approved settlement agreements are placed on the left side of the file. On the right side there are file dividers for "Region" (for regional determinations, such as agenda outlines, agenda minutes, advice submissions); "Letters" (all correspondence in chronological order); "Memos"; "Statements" (for all affidavits, which are alphabetized); and "Exhibits" (for contracts, correspondence between the parties, etc.). "Settlement" and "Trial" dividers are added as applicable.

Transfer of Docketing and Other Support Staff Work [2]

As the needs of offices vary and as computerization allows the Agency to share documents and work on a national basis, regions suffering from support staff shortages should consult with Operations-Management about transferring work to a region that is better able to handle the work. The Committee noted that some docketing and other work is already being transferred between regions with positive results.

[2] See discussion infra regarding Use of Support Staff in Casehandling.

CONDUCTING C CASE INVESTIGATIONS

The Committee examined various practices and procedures followed in the field that are designed to increase the efficiency or quality of C case investigations. For instance, we reviewed the use of questionnaires, telephone affidavits, methods and timing of soliciting evidence from the charged party, effective use of deadlines and investigative techniques for out-of-town cases.

Face-to-Face Affidavits

The Committee concluded that, with the exceptions noted below, the best practice for gathering testimonial evidence is a sworn statement taken by a Board agent during a face-to-face meeting. The Agency's traditional and time-tested mode for gathering evidence enhances the Board agent's ability to obtain complete and accurate testimony and to better evaluate the witness' potential credibility and effectiveness as a witness at trial. The personal affidavit-taking session also allows the Board agent to build a rapport with the witness which might help obtain future cooperation, or, if the witness is the charging party, assist in obtaining settlement or withdrawal of the charge. Such a meeting also provides these individuals with personal and direct contact with the Agency and gives them a sense that their problems are, at least, being heard by the government.

Telephone Affidavits and Questionnaires

While the Committee concluded that a face-to-face affidavit is the best technique for gathering evidence in C case investigations, there are some exceptions to this general premise. Telephone affidavits are usually appropriate for obtaining supplemental evidence from witnesses who have previously given a face-to-face affidavit or for gathering evidence on backpay for compliance purposes. In addition, travel and budgetary concerns are appropriately considered in determining the manner in which to investigate a case. When travel or budgetary concerns are a factor, it is appropriate to take telephone affidavits in clear deferral cases and in cases where there is a very high probability of no merit.

While the Committee was able to agree as to the above regarding the use of telephone affidavits, it was unable to reach a consensus as to the use of telephone affidavits in other situations.[3] As to questionnaires, the Committee concluded that the use

[3] Some members of the Committee believed that use of telephone affidavits should not be expanded, given our conclusion that face-to-face affidavits are the preferred approach, absent severe budgetary restrictions. Those members who favored face-to-face affidavits were concerned that it is not always easy to identify a case that has little likelihood of merit or no material issues of fact and may be especially difficult to identify where the investigation has been done telephonically. Other Committee members felt that telephone affidavits are appropriate in a wider range of cases. The basis for that view was that resources are better spent on those cases having a substantial impact on the public. Accordingly, those holding this view would extend the use of telephone affidavits to those cases which are determined to be fairly straightforward with little likelihood of merit and those where there appear to be no material issues of fact.

of questionnaires may be appropriate in situations such as salting cases or in other fact patterns where there are a number of similarly situated witnesses. Beyond that, the Committee was unable to reach consensus on the use of questionnaires.[4]

In light of the Committee's inability to reach a consensus, the General Counsel determined that the best practices regarding the use of "lightening the load" techniques, such as telephone affidavits, questionnaires and statements of fact, should be those incorporated in previously issued General Counsel memoranda, such as the Impact Analysis Report (issued November 1995) and the "Lightening the Regional Office Workload" GC Memorandum (GC 95-15 issued August 22, 1995). More specifically, the General Counsel cites to the following statement in the Impact Analysis Report as guidance with regard to the use of alternative investigative techniques:

> All cases regardless of category, should continue to receive a high quality investigation in accordance with the practices described herein. For example, consistent with the "Lighten the Load" memorandum issued recently, there are certain investigative techniques which could be used in lieu of obtaining affidavits, such as preparing a "Statement of Facts" based on a telephone interview with the Charging Party, a copy of which is mailed to the charging party with a deadline for comments. This streamlined approach would generally be appropriate only when the material facts are not in dispute and there is a low probability of merit. Where an affidavit is warranted, the use of telephone affidavits should be encouraged. Although the use of streamlined methods is not limited to any particular categories, it is presumed that most Category I cases would be appropriate for such treatment. On the other hand, it is presumed that such treatment would not be appropriate for most Category III cases as they usually involve factual disputes and have a much greater probability of merit. It is important to emphasize that under the Impact Analysis model, regardless of the investigative techniques used, a high quality decision remains a key objective. Under Impact Analysis the regions will exercise careful judgment and use only those techniques appropriate to reach a quality decision (see P. 6).

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[4] There was a division within the Committee regarding the use of questionnaires. Because of concerns about the reliability of responses achieved on questionnaires, the fear that a party may unknowingly omit pertinent facts, and the potential for Jencks' Act problems, those holding the first view concluded that a questionnaire should never be used as the sole evidence in an investigation. In addition to the concerns raised above, those holding this view felt strongly that often a face-to-face affidavit is the only contact a charging party will have with the government and, in a situation of such importance to the charging party, the better practice is to have at least one meeting.

Those holding the second view agreed that questionnaires can be a helpful investigative tool and an appropriate first step in an investigation. They felt that the use of questionnaires is appropriate in clear deferral cases and in cases where there is a high probability of no merit. Those adhering to this view felt that the Agency's resources should be allocated to those cases appearing to have a substantial impact o the public. They felt that the luxury of personal contact in every case was not one that the Agency could afford in cases where it appears that the Act is not likely to provide a remedy. In addition, this group noted that the Agency's experience using questionnaires in appropriate circumstances has been positive. Thus, in those regions surveyed, there have been no reported complaints from the public, nor have quality issues been raised.

Dismissal for Failure to Cooperate in Questionnaire Cases

Where questionnaires are utilized, the Committee considered the appropriateness of dismissing a case upon failure to respond to a questionnaire by the designated deadline. Concerns were raised about dismissing a case without any personal contact. Thus, there could be a language barrier, literacy issue or illness that prevented the charging party from responding or from understanding the ramifications of not responding.

Some Committee members believed that as long as the charging party had been clearly and fully apprised of the consequences of not responding to the questionnaire and was given a reasonable time in which to respond as well as the option to contact the office with a request for an extension of time in which to respond, and there was no indication that there was a language or literacy barrier or any other problem, that it would then be appropriate to dismiss the case for failure to cooperate. This group relied on the need to allocate resources appropriately in reaching this assessment. Given all the caveats noted above, if there is no response by a reasonable deadline, the Agency's resources are more appropriately assigned to cases with substantial impact on the public and where the charging party has cooperated in the investigation.[5] In the event such a dismissal is appealed, this group felt that the regional office should treat that appeal as a request for reconsideration and seriously consider setting aside the dismissal.

Other Committee members believed that a case should not be dismissed merely because of a failure to respond to a questionnaire. They would not put the charging party in a position of having his/her case dismissed for failing to respond to a questionnaire without further contact. Rather, they would treat failure to respond to a questionnaire in much the same way some regions currently treat an initial failure to respond to a phone call or written inquiry; further attempts would be made to contact the charging party by telephone or letter before dismissal. This group believed that the benefits of personal contact, or at least attempting it, were worth the additional resources expended. For many individuals this may be their only contact with a governmental agency such as ours.

Letter to Charging Party

The Committee determined that in certain instances it is **a practice worthy of consideration** to send a letter to a charging party early in the investigation of a charge raising complex theories or numerous allegations requesting the charging party to provide a statement of its theories and evidence in support of the charge. The charging party should be requested to provide this information early in the investigation. This technique may be particularly helpful when the charge involves a 10(j) situation and expeditious handling of the case is paramount.

[5] For dismissals in other cases, see discussion below regarding the use of standard letters in the section on Implementing C Case Investigations.

Clustering of Cases

The Committee concluded that in most instances it is a best practice to cluster cases geographically to maximize travel resources.

Screen Agendas

The Committee determined that the use of screen agendas, a practice utilized in Region 20, is a **practice worthy of consideration**. A screen agenda is an agenda held relatively early in the investigation process, for Category III cases usually 10 days after the filing of a charge, designed to provide an understanding of the issues presented and to provide the agent with guidance in completing the investigation. Usually in attendance at a screen agenda is the RD, or his or her designee, other members of regional management requested to attend by the RD, the supervisor and the agent. By this point of the investigation the agent should have obtained the lead affidavit or affidavits, thus allowing for an evaluation of the legal and factual issues. The agent makes a brief presentation of the evidence and issues presented at that stage of the investigation. Usually this is done orally, though brief notes might assist the agent in making the presentation. A screen agenda also allows for an early reevaluation of the category assigned to a case, an early assessment of whether the resources allocated to a case are adequate, a refinement or clarification of the steps needed to complete the investigation and of the region's position on various issues. Normally a screen agenda is relatively short – lasting about 10 minutes. The agent, supervisor or RD can request that a screen agenda be held in any case. This technique has been found most applicable to Category III cases, possible 10(j) cases and other cases presenting unusually difficult, complex or sensitive issues.

Monitoring Case Status

The Committee concluded that it is a best practice for regions to conduct periodic meetings or discussions for the purpose of monitoring the status of pending cases. These meetings/discussions may take many forms ranging from the informal approach used in some regions, where the RD meets informally with team supervisors and/or agents to inquire about a specific case or cases, to the more formal approach where the region has a regularly scheduled supervisor/managerial meeting each week, or even more frequently, to discuss all of the cases in the region that are due to be reported. In at least one region, the RD, ARD and RA meet regularly as a group with individual supervisors to discuss the cases that the supervisor has to report. This approach obviates the need for other supervisors to listen to the reporting of other teams' cases. However, it was noted that listening to other teams' reporting, while time consuming, could be beneficial as it keeps all supervisors abreast of the casehandling activities of other teams. The form or approach to these case meetings/discussions may depend on the size of the office and the skill level of the staff and supervisors involved. The Committee agreed that it should be left to the discretion of regional management to decide the type of meeting or discussion utilized.

The Committee concluded that it is a best practice to have some format for keeping track of cases in the regional office that allows managers, supervisors, and staff members to have ready access to this information. This information could be provided in many forms including for example, the maintenance of a wall board or chart which lists all case assignments currently being processed in the regional office. In one region (Region 7) which uses this system, the board is maintained by the ARD who, because he assigns new cases and has access to information about changes in the status of cases, updates the board regularly. Another approach used by many offices is to generate a case list using Excel or some other similar program that sets forth all of the current regional cases. This list can be updated by some regional manager or supervisor and made available to all staff members on their individual computers. Other types of case lists, such as a list of all upcoming trials or hearings can also be used either as a supplement to the above-mentioned lists and/or charts or as a separate grouping. The cases on these lists or boards should be classified or categorized according to Impact Analysis, in order to provide for the immediate recognition of high impact, high category cases. There are, of course, other methods for keeping track of cases within the region, such as the case status reports and case cards maintained by supervisors. While these are important tools for managers, they are not a substitute for the case board or general case list that is accessible by everyone in the region. There may also be a need for more than one form of case tracking device in the regional office. However, by making a general case list or board available to all agents, they are able to see at a glance what their fellow agents are doing, which promotes a sense of openness among the staff.

MAKING C CASE DETERMINATIONS

Delegation of Authority/Levels of Review

The Committee concluded that it is a best practice for RD's to empower their first-line supervisors by delegating to them the authority to make case decisions in certain types of cases. In this regard, for those cases clearly lacking in merit or presenting non-controversial deferral issues, it is a best practice to delegate the decision-making process to a team supervisor. This procedure, as well as others discussed herein, contemplates full supervisory review of the case file, including reading affidavits. These cases can often be decided on the basis of an oral discussion between the team supervisor and agent or on the basis of a brief memo outlining the facts and issues and containing a brief analysis and recommendation. After a case determination is made at this level, a memo or minute is placed in the file outlining the basis for the decision.

The Committee perceived a number of benefits to the practice of delegating to team supervisors the responsibility of deciding clear cases. First, it avoids unnecessary layers of review of a case. It also eliminates the unnecessary participation by members of regional management in the determination of straightforward cases. This will free those individuals to concentrate on those cases and other duties that are more commensurate with their experience and level of expertise. Second, it should expedite the processing of

routine no-merit and deferral cases. Further, it will provide a measure of empowerment to team supervisors and, to a lesser extent, to agents, a process that should contribute to the general improvement of morale in regional offices. There still remains a check and balance with respect to these decisions because both deferral letters and no merit dismissal letters can be reviewed by higher management.

The Committee determined that reducing the level of review for certain documents such as settlement agreements, pre-trial briefs, complaints, and subpoenas is a **practice worthy of consideration.** In these cases, the Committee felt that a single level of review with discretionary review by upper management will promote efficiency and provide for adequate quality control. Other documents might also lend themselves to team level review, depending on the experience level of those involved.

Level of Pre-Decisional Preparation

The Committee concluded that in making case determinations, it is a best practice to require only that level of pre-decisional preparation necessary for the thoughtful and intelligent disposition of the issues presented. In this regard, **for straightforward cases posing no complex factual and/or legal issues, the Committee concluded that it is a best practice to have the case decided on the basis of an oral agenda.** In the context of this report oral agenda means that the agent prepares no final investigative report (FIR) or agenda outline in advance of the agenda. Rather, the agent orally presents the facts, issues, analysis and recommendations in the case to the other members of the agenda committee. The Committee did not believe that it is inconsistent with the concept of an oral agenda for the agent to prepare a brief outline or talking points to aid in the presentation of the facts, issues and recommendations at the agenda. Such material may be helpful, indeed at times essential, to allow for the proper presentation and consideration of a case. The key is to tailor the amount of preparation to the level necessary for the thoughtful and intelligent determination of the issues presented. After an oral agenda, the agent should ensure that the file reflects the critical facts considered and the rationale for the decision, either in the form of a summary report or a minute.

For cases involving more complex factual and/or legal issues, but not unusually complex ones, the Committee concluded that it is a best practice to have the case decided with the use of a brief written report or outline distributed prior to an agenda. The decision may also, in appropriate cases, be based solely on the report/outline. Generally, the report/outline should have a brief introduction that includes a description of the charge allegations and of previous or related cases; a brief recitation of the facts; a discussion and analysis of the facts and law, with research as appropriate; and the agent's recommendation. For purposes of this discussion, this type of written report/outline is referred to as an "agenda outline." By necessity, the length of an agenda outline will vary depending on the number, nature and complexity of the issues involved. But the touchstone should be to require only a sufficient amount of material to allow for the thoughtful and intelligent resolution of the issues presented. While the Committee

concluded that it is not possible to specify an appropriate length for all agenda outlines, it believed that a high percentage of cases in this category can be decided on the basis of an outline consisting of no more than two to three pages, excluding attachments. The quality of such an agenda outline should be assessed on whether it presents the critical facts and analysis so that it fulfills its essential function, i.e., allowing for the thoughtful and intelligent discussion and determination of the various issues presented. In assessing the adequacy of agenda outlines, the focus should not be on minor grammatical or spelling errors or typos, although technological advances such as "spell check" should minimize such errors.

The Committee further concluded that it is a best practice to limit the use of FIR's, a term used in this report to describe a full-blown written presentation of a case, only to those cases presenting unusually complex factual and/or legal issues. The Committee recognized that it is difficult to draw the line between the categories of cases that are appropriate for disposition on the basis of oral agendas, as opposed to agenda outlines; and between those appropriate for disposition with agenda outlines as opposed to FIR's. Nonetheless, it is important and worthwhile for regions to make these distinctions and to utilize these varying levels of pre-decisional preparation. A number of regions have already implemented many of these measures without the loss of any measurable level of quality in their casehandling. A wider adoption of these measures would enhance the regions' overall efficiency without any material diminution in the quality of casehandling.

Other Practices

In standard failure-to-cooperate cases, a **practice worthy of consideration** is to have an agent prepare a dismissal letter that includes a description of the efforts to reach the charging party and the resulting failure to cooperate. After drafting the letter, the agent forwards it, along with the file, to the RD for signature. This streamlined procedure obviates the necessity of preparing a case report or other unnecessary written materials in standard failure-to-cooperate cases.

Another **practice worthy of consideration** is the use of rush memoranda in routine test of certification cases. In the region where this procedure is used, when a routine test of certification charge is filed, the person making the assignment (the ARD) marks the assignment as a rush and notes that the charge appears to be a routine test of cert. If this turns out to be the case, the Board agent submits the draft complaint with a cover buck slip noting "rush – test cert" and a short reference to the evidence. Usually no agenda is necessary.

Another **practice worthy of consideration** in Category III and II cases is the use of Investigation Completion Reports (ICR's). An ICR[6] is a brief memo, usually less than one page, to the RD, RA and ARD noting that an investigation has been completed and usually

[6] A sample ICR is attached as Attachment B.

recommending an oral agenda. In the region where it is utilized, the casehandler's supervisor usually prepares the ICR. Attached to the ICR is a copy of the charge. The ICR contains a recommendation about what the merit determination should be, a brief summary of the facts and issues, and an estimate of how long the agenda should take. The principal purpose of an ICR is to enable the RD to make a determination about how the case should be presented, i.e. through an oral agenda, agenda outline or FIR. It is also used by the RD to make other decisions, such as when to conduct the agenda or if the decision-making responsibility should be delegated to some other manager. Occasionally, the RD may be able to reach a quick case determination solely on the basis of the information presented in the ICR.

IMPLEMENTING C CASE DETERMINATIONS

The Committee considered the following regional practices in implementing C case determinations: extensive use of faxes, acceptance of oral withdrawals, use of standard letters, use of templates, prompt implementation of determinations, sending out settlement agreements to the parties, and sharing settlement agreement language.

Extensive Use of Fax

Several regions use the fax machine to send and receive proposed settlement agreements, withdrawal requests and amended charges. Sending and receiving such documents by fax facilitates prompt implementation of regional determinations. Use of the fax machine with settlement agreements expedites making changes to settlement agreements and enables the revised settlements to be executed promptly which may save the expense of sending a judge or a court reporter to a trial. Regions have also found that using the fax machine to send and receive amended charges expedites issuance of a complaint which requires an amended charge.

The Committee determined that it is a best practice to use faxes whenever possible to implement regional determinations, and to act on the returned fax document, rather than waiting for receipt of the original. However, the Committee would not find it a best practice to use the fax with an individual charging party who does not have easy access to a fax machine.

The fax machine is also being used effectively during the investigative stages to arrive at quicker determinations. For example, deadline letters are sent by fax to accelerate the receipt of evidence. However, if a fax is being sent to a long distance telephone number, consideration should be given to the number of pages being sent and to the cost of long distance phone usage.

While in the future electronic mail (e-mail) might be used for various casehandling procedures, such as withdrawals, sending and receiving documents and for communicating with parties, the Committee determined that it would be premature to make a recommendation about expanding the use of e-mail in casehandling. The Committee perceived a number of potential issues associated with the expanded use of e-mail. For

instance, there are issues relating to meeting FOIA obligations, to ensuring the adequate documentation of files, and to establishing rules governing the types of documents that may be served by e-mail – to name but a few. The Committee determined that the issue requires further study, a process that is underway at Agency headquarters, and perhaps testing in several regions.

Use of Oral Withdrawals

Several regions reported that the use of oral withdrawals saves considerable time and Agency resources. For example, if an agent contacts a charging party by telephone and the charging party agrees to withdraw, it is unnecessary to send letters or withdrawal forms through the mail.

The Committee determined that it is a best practice to use oral withdrawals, except where there are potential 10(b) problems or where there are concerns about the lack of trustworthiness of the charging party.

It was noted that some regions have a form which facilitates approving an oral withdrawal.[7]

Short Form Dismissal as Default Method

The Committee determined that a system whereby a short form, rather than a long form, dismissal is sent when the charging party cannot be contacted regarding the disposition of his/her case may be desirable. This procedure would conserve resources and the charging party can, upon receipt of the dismissal, request a long form dismissal (summary report)[8]. Some Committee members expressed reservations that this use of the short form dismissal may not provide an adequate explanation for the basis of the dismissal as required under the Administrative Procedure Act (APA). The Committee recommends a pilot program to test this concept and any impact on customer satisfaction, assuming it does not violate the APA.

Use of Standard Letters

Several regions use standard letters to solicit withdrawal. CHM Section 10120.3 provides that a charging party should be given the opportunity to withdraw a charge voluntarily before the charge is dismissed. **The Committee concluded that it is a best practice for the agent to advise the charging party orally of the determination not to proceed, and to make reasonable efforts to contact the charging party by telephone for this purpose.** Letters should not be sent routinely to inform a charging party of the determination, as that is an unnecessary use of resources. However, after the

[7] A sample form for use with oral withdrawals is attached as Attachment C.

[8] If, after being sent a short form dismissal, the charging party requests a long form dismissal, it will be necessary to grant the charging party additional time to appeal.

agent has attempted unsuccessfully for two or three working days to reach the charging party by telephone, it should be left to each region's discretion whether to send a letter to the charging party advising of the right to withdraw the charge or to simply dismiss the charge. Where a letter soliciting withdrawal is used, to preserve resources, it should be a standard letter[9].

Use of Templates

The Committee concluded that using templates is a best practice because they improve the efficiency, and usually the accuracy, of preparing routine documents.[10] However, as with any standard or routine document, care must be exercised to ensure that any necessary modifications to the document are made. Although CATS will enhance the development and use of templates, existing templates can be modified for use in CATS so regions are encouraged to develop templates now.

Prompt Implementation of Determinations

Several regions reported that, after a determination in a case, they promptly contact charging parties to seek withdrawal or promptly distribute proposed settlement agreements to the parties. **The Committee concluded that prompt implementation of a determination after a deadline is a best practice, but recognized that the ability to implement this practice is dependent upon adequate staffing in the regional office**.

15-Day Lead Time for Issuance of Complaint

ULP Manual Section 10126.2 provides for a 15-day time period to allow respondents to decide whether to settle a case. However, due to time pressures, particularly at the end of the month, such lead time before complaint issues is usually not provided and is not realistic. The Committee recommends to the Manual Revision Committee that the appropriate manual provisions be amended to reflect a more realistic time, no more than a week, for a party to decide whether it will settle. However, where a respondent categorically states that it will not settle, there is no need to delay issuance of complaint.

Sending Out Settlement Agreements to Parties

The Committee discussed whether settlement agreements should be routinely submitted to the parties in all meritorious cases. **The Committee concluded that it is a best practice to prepare settlement agreements in most cases.** However, regions should have the discretion to conclude that, in a particular situation, preparation of a settlement agreement is not an effective use of resources.

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[9] A sample standard letter seeking withdrawal of the charge is attached as Attachment D.

[10] See also the discussion below of templates in connection with Utilization of Technology in Casehandling.

One region reported use of standard letters to transmit settlement agreements to the parties and provide deadlines for signing the agreements.[11] Where such letters are sent, a standard letter is desirable because that preserves resources.

Sharing Settlement Agreement Language

One region keeps settlement agreements on their common drive so they are available for examination and copying. Another region is beginning to put boilerplate settlement language on the common drive for agents to use. Region 20 has a manual[12] for agents to share which contains about 30 to 40 pages of sample notice language. The Committee decided that having sample settlement language readily available is a **practice worthy of consideration**.

SETTLEMENT PROCEDURES

Settlement Coordinator

The use of a settlement coordinator can provide a resource for the identification of cases amenable to settlement and helps foster settlement efforts by regional personnel. **The Committee concluded that use of a settlement coordinator is a best practice and particularly appropriate when the following criteria exist:**

1. The region's resources will permit the designation of such an individual.

2. The region's calendar extends more than six months.

Where the region has a trial calendar less than six months, regional personnel, such as the investigating agent or the trial attorney, are likely to timely examine the file and seek settlement. However, where the trial calendar exceeds six months, regional personnel because of the press of other work, may allow cases to sit without sufficient efforts to settle those cases.

For regions with a trial calendar less than six months, the Committee concluded that the settlement coordinator concept is a **practice worthy of consideration**.

Participation of Upper Management

The participation of upper management in settlement efforts can often elicit the extra attention from respondents necessary to bring settlement to closure. Statements by upper management regarding the strength of a case or the options open to the region regarding this case may provide greater incentive to respondents to settle. However, there should be an ongoing dialog with the trial attorney regarding the settlement process so that neither management nor the trial attorney undermines the efforts of the other. The trial attorney

[11] A sample letter transmitting a settlement agreement to the parties is attached as Attachment E.

[12] Upon request, Region 20 will provide copies of the manual to other regions.

should be brought into any settlement meetings that upper management has with respondents. The Committee concluded that it is a **practice worthy of consideration** for upper management to participate in the settlement process, but that it is best left to regional discretion as to which cases should be designated for such participation.

Review and Assessment of Settlement Prospects

The Committee concluded that the periodic review and ongoing assessment of cases currently set for trial provides the best method for monitoring and identifying cases susceptible to settlement and is a best practice. The assessment contemplated can take the form, for example, of periodic meetings of regional personnel at which cases on the trial calendar are examined. However, any other format would also be acceptable. While the frequency of such assessments should be left to the regions, the assessment should be ongoing from the time complaint issues.

Pre-trial Conferences

In addition to the existing settlement judge program, [13] the Committee concluded that the practice of holding pre-trial settlement conferences between regional personnel and the parties sufficiently in advance of the trial is an effective tool for achieving settlement. However, such meetings can be duplicative and nonproductive when parties have taken a clear position against settlement. Accordingly, the Committee concluded that the pre-trial settlement conference is a **practice worthy of consideration**.

TRIAL ASSIGNMENTS AND TRIAL WORK

Scheduling of Trial Assignments

Trial assignments should be made as quickly as possible in order to provide a sufficient amount of time for the trial attorney to pursue settlement efforts and to prepare for trial. **The Committee determined it is a best practice to assign trials at least 60 days in advance of the hearing date, although the Committee recognized that there may be circumstances where it might not be feasible to do so.** There are times when trial assignments are made less than 60 days prior to the hearing, such as expedited hearings or Category III cases. Further, there might be instances where the assignment is made much earlier than 60 days prior to the hearing as in the case of a very complex trial which requires an extensive period of time to adequately prepare for trial. In this regard, regions need to retain some flexibility in making trial assignments rather than requiring all trial assignments be made at least 60 days prior to the hearing.

[13] The settlement judge program is discussed in Memorandum OM 98-95.

Assignment of Trial Attorney

With regard to assignment of the trial attorney, the Committee discussed the desirability of assigning the trial to the investigating attorney. In at least one region, it is the practice to assign the trial to the attorney who investigated the case, unless there is some overriding concern such as the trial being too complicated. In that situation, the region usually assigns the investigating attorney to second seat the trial. This was deemed beneficial for several reasons: a) it saves resources since the attorney is already familiar with the contents of the trial file; b) it is an excellent method for trial training in those cases where the investigator is assigned to second seat; and c) the quality of the trial will improve since the trial attorney would have the benefit of not only familiarity with the factual and legal issues, but also with any potential witnesses or problems with the case. Some members of the Committee believed that it is more effective, absent some overriding concerns, to assign the trial to the investigator for the reasons noted above.

Other members of the Committee took a contrary position and believed that generally assigning the trial to someone other than the investigating attorney is the more effective practice. These Committee members noted that at least one region's practice, with rare exceptions, is not to assign the trial to the investigating attorney so as to obtain the benefit of a "fresh look" by the trial attorney. This is considered beneficial inasmuch as the trial attorney might view the case differently and perhaps see the need for additional investigation, research or reconsideration. Assigning the case to a new attorney might also facilitate settlement where a party may perceive the investigating attorney as biased.

The Committee concluded that there are pros and cons to each approach and the ultimate decision as to which is the better practice should remain within the discretion of each region.

Subpoenas

The Committee determined that in preparing subpoenas for trials, both those sent at the request of Counsel for the General Counsel and those sent to a party requesting blank subpoenas, it is a best practice for the region to type on the subpoena the date of the scheduled hearing, and thereafter the phrase "or any adjourned or rescheduled date". The addition of the phrase "or any adjourned or rescheduled date" potentially avoids the additional work and expense involved in issuing new subpoenas when trials are rescheduled or adjourned.

10(j), 10(l) AND OTHER DISTRICT COURT LITIGATION

Assignment of Work

The Committee determined that it is a best practice to assign District Court injunction litigation work to the attorney who investigated the case, provided the

individual is sufficiently experienced to handle the matter.[14] This would promote efficiency. The expedited/priority nature of this work makes it different from routine trial assignments where there is usually more time to prepare. **The Committee also determined that it is a best practice, for training purposes, to assign less experienced attorneys to assist more senior and experienced attorneys in the preparation of injunction papers and related court work.**

Maintenance of Injunction Files

The Committee concluded that it is a best practice to maintain, by 10(j) category, the 10(j) "go" memoranda distributed periodically by the Injunction Litigation Branch. These memoranda should be maintained in an area not accessible to the public.

The Committee also concluded that it is a best practice to maintain sample pleadings in 10(j) and 10(l) cases handled by the region. A practice worthy of consideration is maintaining sample 10(j) and 10(l) injunction papers and related documents on a region's "H" drive for easy access by both the professional staff and support staff. These materials should continually be reviewed for currency and relevance to ensure that the file server does not become overloaded.

Techniques for Litigating Injunction Cases

Where courts permit the litigation of injunction matters by affidavit only, the Committee concluded that, in most cases, it is a best practice to use this technique as it saves time and resources.

Support Staff Function

The Committee concluded that designating one support staff member, with a backup, to serve as the lead support staff person in coordinating and processing 10(j) and 10(l) injunction work, is a best practice. This practice promotes efficiency and accuracy in the preparation of injunction papers.

Consideration of Injunction Matters in Pre-Agenda Minutes or Reports

The Committee concluded that it is a best practice for a region to have a system that reminds the region to consider 10(j) issues in all cases which fall into the categories specified in the 10(j) manual.

[14] This is not to imply that the Committee is recommending that priority cases only be investigated by attorneys.

The Committee also concluded that in meritorious potential 10(j) cases it is a best practice to discuss in the post-agenda minute or report the 10(j) factors, including the rationale for seeking or not seeking injunctive relief.

Preparation of 10(j) Submissions to Advice

The Committee considered the desirability of regional preparation of comprehensive 10(j) Advice memos containing, inter alia, the arguments and authority to be submitted to the district court. While the preparation of a comprehensive 10(j) Advice memo is a time-consuming task, computer access to previous 10(j) memos and disks sent to each region containing the language and research for that region's circuit have eased the burdens associated with the preparation of such a memo. While some members of the Committee were concerned that when a region prepares the "arguments and authority" section of the memo we are merely regurgitating to Advice what they have previously sent to us, there was consensus that the preparation of a complete memo is worth the extra effort involved. Thus, the complete or comprehensive memo assures that regional personnel have fully thought through the case and have focused on the applicable case law and arguments that will have to be made in district court. Leaving out this section could lead to potential misunderstandings about the applicable law and/or arguments. Further, having worked through the applicable law and arguments the region is in a better position to more expeditiously file the 10(j) petition once Board approval is granted. **Accordingly, the Committee concluded that regional preparation of comprehensive 10(j) advice memos is a best practice.**

Expedited Hearings

With respect to expedited hearings as set forth in Memorandum GC 94-17, the Committee considered whether the 28-day target should be expanded. The Committee concluded that attempting to meet the expedited hearing target date of 28 days should be encouraged. This is an effective method to encourage respondents to settle cases quickly. While the 28-day target may not always be met, such a goal may generate trial dates close to 28 days, which is still markedly better than the current trial docket. **The Committee concluded that the use of expedited hearings is a best practice and regions should strive to meet the 28-day target.**

UTILIZATION OF TECHNOLOGY IN CASEHANDLING

Maximizing Efficient Use of Computer Technology

The Committee concluded that it is a best practice to maximize use of computer technology to enhance all aspects of casehandling. Areas in which regions have successfully utilized computer technology include mail merge, templates, putting the trial calendar and hearing calendar in a Word or Excel document, an electronic log of all cases being worked on in the regional office which can be added to or subtracted from periodically, and greater use of the various software and legal research materials

available such as Westlaw, Summation and ZyImage. Maximizing the use of our technological capabilities will necessitate the need for ongoing regional training.

The Committee concluded that it is a best practice to increase utilization of computer technology in docketing. In this regard, mail merge and the greater use of templates are encouraged in addition to other systems and programs regions may have developed to maximize our resources in this area.

Templates

With respect to existing templates, the Committee concluded that a directory of all existing templates, broken down by the level of technology required to operate the program and/or the system utilized, i.e., Word 95, Word 97, CATS etc., should be created. This will allow regions to peruse the list of available templates and to pick those best suited for their purposes. Further, this sharing will further maximize resources in that each region will not have to separately develop technology that has already been developed by another region or headquarters. For example, Region 13[15] has created a complaint template which allows insertion of the paragraphs from the complaint manual. Sharing this template with other regions will conserve resources and speed the preparation of complaint drafts. There are, of course, other regularly used documents in the regional offices, such as initial docketing letters, standard orders extending or denying time for filing, deferral letters and the various letters that are used to invite settlement and broadcast the possible issuance of complaint, that should be reduced to template form if not already done.

The Committee also concluded that it is a best practice, wherever practical, to substitute electronic documents for paper documents. Certain types of routine administrative documents and announcements are well suited for transmission by electronic mail and/or being published on an electronic bulletin board. Also, complaint drafts, motions, briefs, and other similar documents where higher levels of review are involved, lend themselves to review through the electronic mail process. Regions using this procedure speak highly of it in that it facilitates the review process and cuts down on the flow of paper. It was agreed, however, that not every document lends itself to electronic review and that certain documents because of their length, complexity or the amount of review involved, may better be reduced to paper. Examples would be difficult decisions and directions of election, lengthy briefs and advice memos. Obviously, even certain of these documents may lend themselves to electronic review depending upon the circumstances. Each regional office will have to decide how to best implement this process. **Because, the "H" drive, which is available for all electronic documents, may become overloaded, the Committee concluded it is a best practice to periodically review the "H" drive to delete unnecessary documents.**

[15] Copies of the Region 13 complaint template may be obtained by contacting Committee member Dorothy D. Wilson at (314) 539-7768 or Charles Posner at (202) 273-2893.

The Committee further concluded that a **practice worthy of consideration** is the formation of a regional "technology committee" to deal with technological advances and issues such as a uniform system of naming files, organization of the "H" drive, periodic cleaning of the "H" drive, and training needs.

Saving Significant Documents/Information

Currently regions use a variety of methods to retain information in case files in such a way that it can be easily accessed and utilized. The Committee concluded that, in addition to the hard copy in the file, maintaining, in computerized form, formal written documents and other significant information and evidence is a **practice worthy of consideration**. One way to maintain these documents is to place a disk in each file and to save significant documents/evidence on the file disk. If a region decides to adopt this practice the disks should, in most instances, be removed and reused when the charge is ultimately withdrawn or dismissed. Another way to maintain information is to save significant documents/evidence to the common drive. Care must be taken not to overload the system, but the added benefit is that the documents saved can be used as samples. Both of these methods are economical ways to maintain file information.

The Committee concluded that it is a best practice to maintain on the computer a list of names and addresses of the region's regular practitioners and frequent filers so that regional personnel can draw from that list when new charges are filed or correspondence needs to issue. This has been an effective time saver for many regions. Regions are encouraged to prepare such a list which will be helpful now and can later be utilized in CATS. [16]

Modems

A proposal was considered that a modem be provided for each computer used by a Board agent. The agent could use the modem to telefax documents from his/her computer. However, the Committee determined that at present there is no need for a separate modem at each computer. Agents have access to fax machines in their regions. In addition, the current technology provided to the regions allows agents access to the various services through the servers in each region. The Committee determined that the modems would be an unnecessary expense at this time.

Manuals on Common Drive

The Committee concluded that it is a best practice to have all casehandling manuals (ULP, representation, compliance and ALJ) with identifiable hyperlinks placed on an agency server so that all employees would have access to them from their computers. This would allow for ease of access as well as quick updating of the manuals. In addition, where the text of manual refers to a GC or OM memo, the Committee

[16] Regions who are interested in more information about how to create such lists and use them may e-mail or telephone Region 14 DRA Dorothy D. Wilson (314 539-7768).

recommends that there be a hyperlink (allowing the agent to click on the memo name on screen and enter that memo) to that memo from the text. **In addition, the Committee concluded that it was a best practice to have all official memoranda and special distributions with an appropriate index available on a common drive for all employees.**

Use of Scanners

The Committee recognized that a computer scanner may be a valuable tool which should be available to each region. A scanner will "scan" a document and then produce the text from that document in a software format which can be stored on a disk. The region can then use the text from the scanned document for other word processing projects. The Committee noted that the cost of scanners has dropped and the technology has improved considerably in recent years, and has recommended that the Agency undertake a new pilot program to study the advisability of making scanners available to all regions.

USE OF SUPPORT STAFF IN CASEHANDLING

The Committee considered the difficulties that various regions are experiencing because of limited support staff. The reduction in the hiring of support staff has resulted in professional employees performing functions traditionally performed by support staff. This has had an impact on the time that professionals have available to perform casehandling. The Committee also noted that to implement its recommendations on expansion of support staff duties, such as the monitoring of deferral cases, would require adequate support staff in the regions.[17] Therefore, the Committee recommends that, to the extent the budget permits, priority should be given to hiring support staff so as to bring each region up to its ceiling. Further, the Committee recommends that the support staff ceilings be reexamined to determine if there is a need to adjust the ceilings to accurately reflect the need for support staff in each region.

Some examples where support staff could be effectively used are as follows:

a). Deferral - presently many regions use GS-14 supervisors to do routine deferral follow-up; a practice which is costly and inefficient, but driven by the lack of proper support staff support. **The Committee determined that it is a best practice is to have a trained support staff employee keep track of all deferred cases and send the appropriate follow-up inquiries.**

b). FOIA - A properly trained support staff employee working with a professional employee would keep all the records, handle routine searches and prepare responses. Much of the material may already be in the CHIPS or CATS system, and a support staff person is a logical person to work with FOIA

[17] The Committee is cognizant of the fact that a clerical restructuring committee is dealing with these issues and has been examining an expansion of the functions performed by support staff.

requests. In lieu of full searches, it is suggested that the FOIA person ask the requester if a computer printout (from CHIPS or CATS data) would suffice.

c). Injunction work. (See discussion on page 16).

USE OF TEAMS/TEAM APPROACH

Many regions currently use a team approach or specially established teams to handle specific casehandling responsibilities.

The Committee concluded, consistent with the General Counsel's Impact Analysis Program, [18] it is a best practice to utilize a team approach on large groups of related cases or on individual cases that have some combination of the following features:

a). a number of complex issues;

b). a large number of witnesses;

c). voluminous documents to review;

d). high impact/high profile.

The assignment of cases involving the same charged party to members of the same team is a **practice worthy of consideration**.

Various regional offices are utilizing the team approach in a number of ways. The Committee concluded that the creative use of teams to handle cases is a **practice worthy of consideration**. Some regions have created the following teams.

a). Some regions use a team made up of the investigating agent, an experienced litigator, and a new attorney to handle injunction cases. As previously discussed, the Committee concluded that this approach might improve the handling of 10(j) and 10(l) cases and provide a good training ground for newer attorneys.

b). Some regions use a compliance team through which Board agents are rotated. This helps the career development of employees through the handling of possible compliance work in the areas of bankruptcy court work, depositions, and various mechanisms for the attachment of property.

c). In Region 8 members on a C case team assign cases to themselves daily by selecting cases from an "in box". Cases not taken after two days are assigned by the team supervisor. The majority of cases are handled by a single agent. Large cases are handled by a team effort, with a primary

[18] See Impact Analysis Training Manual, November 1995, pages 14 and 15.

investigator responsible for their progress. Weekly team meetings are held at which the status of all cases, the balance of work priorities and the need for assistance are discussed. When more than one team member has participated in the investigation, at the team's discretion, all participating team members are included in the agenda. Assignment to this team is voluntary and its members are generally more senior agents.

d). Some regions use a team to handle R case or R case decision writing assignments. The Committee concluded that this is a **practice worthy of consideration,** but only if the team members are also assigned Category I or noncomplex Category II C cases so as to best utilize their time and efforts.[19]

TRAINING TECHNIQUES

The Committee concluded that periodic staff training, at least monthly, is a best practice that cannot be overemphasized.[20] This should include training on new issues, novel or interesting issues that have come up in regional agendas, new Board and court decisions, and other issues the staff needs to be informed of. **Simply stated, having a well-trained staff is a best practice.** Unfortunately, training is frequently the first thing to go when resources become scarce.

The Committee also concluded that it is a best practice to have a training coordinator in each region to keep resource materials up to date, and to develop training programs including those which make use of experts on the staff who have specific knowledge of specific areas. Resident offices and subregions should be included in training. **It is also a best practice to have a central repository of training materials that is organized and kept up-to-date and that also includes up-to-date samples.** It is important not to lose what has already been done, less we have to continually reinvent the wheel.

As to new agent training, the Committee concluded that it is a best practice to have a definite plan for training new agents. This could include a mentoring system for new employees and/or mini-training sessions. **Gaining first hand experience by**

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[19] While the handling of R cases was not within the agenda for this Committee, we have included this item because of our recommendation that where these teams exists, they should also handle certain C case investigations. Similarly, the Committee noted that the existence of teams for specialized purposes does not preclude the use of those team members for non-team related assignments and projects.

[20] The General Counsel and the NLRBU have established an Advisory Committee on Training as set forth in the contracts. The work of that committee is ongoing and led to the appointment of training coordinators in each regional office as well as a counterpart in each Local Union of the NLRBU.

second chairing trials, sitting in on affidavits, and attending C case hearings, were all determined to be best practices for training new agents.

DEFERRED CASES

The Committee concluded that in deferral cases it is a best practice for regions to maintain periodic contacts with the parties, normally every 90 days, regarding the status of a deferred case. Sending periodic letters inquiring about the status of deferred cases is a task suitable to be performed by a support staff member. **Many regions already utilize support staff members to perform this task and the Committee concluded that this is a best practice.** [21]

In most regions the responsibility for monitoring the status of deferred cases is assigned to one individual. **The Committee concluded that because it promotes efficiency and creates a higher degree of assurance that all deferred cases will be monitored on a regular basis, it is a best practice to have a single person within a region assigned the responsibility of monitoring the status of deferred cases.** Once deferral may no longer be appropriate, perhaps as a result of withdrawal, settlement, lack of prosecution of the grievance, issuance of an arbitration award, or other substantive issues, regions may either return the case to the original agent or assign the matter to someone else.

The Committee also concluded that it is a best practice to include in periodic letters to charging parties, a warning to the charging parties about their obligation to respond, combined with a deadline for responding. By including a deadline for responding, regions enhance their ultimate ability to dispose of a case if no response is received.

AUTOMATING THE IO PROCESS

The Committee concluded that it is a best practice for regions to use an automated phone answering service which includes an option of speaking with Board personnel. These systems guide the caller through a number of options, including the option of hearing the message in another language such as Spanish. These systems are an efficient use of the Agency's limited resources so long as the caller has the option of speaking with Board personnel. Scripts for the system may vary since some offices cover a number of states while other offices cover only part of a state. [22] The Committee notes the General Counsel encourages the use of such automated phone answering services and regions currently are authorized to implement such systems.

The Committee also noted that the CATS system includes an IO system whereby Board agents or others will enter certain IO information into the CATS system. As each

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[21] See discussion on pages 19 and 20 relating to Use of Support Staff in Casehandling.

[22] A sample script is attached as Attachment F.

office implements CATS, this additional form of automation should help the efficiency of an office.

OTHER ASPECTS OF PROCESSING C CASES

Staff Recognition

The Committee concluded that it is a best practice to recognize significant contributions by individual staff members or teams. We should not assume that our employees know that we think that they are doing good work. Rather, we need to tell them this from time to time and even single them out for praise. The Committee concluded that acknowledging the efforts of a staff member in front of the entire staff in a periodic staff meeting or by e-mail, is a way of stressing how we are achieving and accomplishing the mission of the Agency and is a **practice worthy of consideration**.

Communications with the Bar and Public

The Committee concluded that a **practice worthy of consideration** is the establishment of a local practice and procedure committee, made up of members of the labor and management bar who would meet periodically with the RD or other staff members to discuss local practice and procedure issues. This practice has been utilized in Region 7 for several years, and has proven beneficial in improving relationships with the local bar and also in providing the region a forum for disseminating the new initiatives of the region and/or the General Counsel such as Impact Analysis and lightening the load. Region 7's Local Practice and Procedure Committee was discussed in the September 1998 issue of "All Aboard".

In addition, the Committee noted that there were several ideas in the area of public outreach set forth in Memorandum GC 99-1 entitled "Best Practices Conversations with America' Initiative" which warrant consideration by the field.

Summary of C Case Best Practices

The Committee concluded that the following are best practices with regard to the processing of unfair labor practice cases:

1. To submit to the Board agent assigned to the case a copy of the charge, immediately upon filing of the charge (as opposed to waiting for docketing and file preparation).

2. To place on the case file the impact analysis category and the due date of the case. This allows easy reference to the priority of the case and the time frame within which the case is to be reported.

3. For a Board agent to gather testimonial evidence by taking a sworn statement during a face-to-face meeting.

4. In most instances, to cluster cases geographically to maximize travel resources.

5. For regions to conduct periodic meetings or discussions for the purpose of monitoring the status of pending cases. These meetings/discussions may take many forms ranging from the informal approach used in some regions, where the RD meets informally with team supervisors and/or agents to inquire about a specific case or cases, to the more formal approach where the region has a regularly scheduled supervisor/managerial meeting each week, or even more frequently, to discuss all of the cases in the region that are due to be reported.

6. To have some format for keeping track of cases in the regional office that allows managers, supervisors, and staff members to have ready access to this information.

7. For RD's to empower their first-line supervisors by delegating to them the authority to make case decisions in certain types of cases such as in those cases clearly lacking in merit or presenting non-controversial deferral issues.

8. To require only that level of pre-decisional preparation necessary for the thoughtful and intelligent disposition of the issues presented. In this regard, for straightforward cases posing no complex factual and/or legal issues, to decide the case on the basis of an oral agenda.

9. For cases involving more complex factual and/or legal issues, but not unusually complex ones, to decide the case with the use of a brief written report or outline distributed prior to an agenda.

10. To limit the use of FIR's (a full-blown written presentation of a case), only to those cases presenting unusually complex factual and/or legal issues.

11. To use faxes whenever possible to implement regional determinations, and to act on the returned fax document, rather than waiting for receipt of the original.

12. To use oral withdrawals, except where there are potential 10(b) problems or where there are concerns about the lack of trustworthiness of the charging party.

13. For the agent to advise the charging party orally of the determination not to proceed, and to make reasonable efforts to contact the charging party by telephone for this purpose.

14. To use templates, because they improve the efficiency, and usually the accuracy, of preparing routine documents.

15. To promptly implement a regional determination after a deadline to a party, although the ability to implement this practice is dependent upon adequate staffing in the regional office.

16. To prepare settlement agreements in most cases.

17. To use a settlement coordinator when the region's resources will permit the designation of such an individual and the region's trial calendar extends more than six months.

18. To monitor and identify cases susceptible to settlement by periodic review and ongoing assessment of cases currently set for trial.

19. To assign trials at least 60 days in advance of the hearing date, although there may be circumstances where it might not be feasible to do so.

20. For the region to type on trial subpoenas the date of the scheduled hearing, and thereafter the phrase "or any adjourned or rescheduled date".

21. To assign District Court injunction litigation work to the attorney who investigated the case, provided the individual is sufficiently experienced to handle the matter.

22. For training purposes, to assign less experienced attorneys to assist more senior and experienced attorneys in the preparation of injunction papers and related court work.

23. To maintain, by 10(j) category, the 10(j) "go" memoranda distributed periodically by the Injunction Litigation Branch.

24. To maintain sample pleadings in 10(j) and 10(l) cases handled by the region.

25. Where courts permit the litigation of injunction matters by affidavit only, to use this technique in most cases, as it saves time and resources.

26. To designate one support staff member, with a backup, to serve as the lead support staff person in coordinating and processing 10(j) and 10(l) injunction work.

27. For a region to have a system that reminds the region to consider 10(j) issues in all cases which fall into the categories specified in the 10(j) manual.

28. In meritorious potential 10(j) cases, to discuss in the post-agenda minute or report the 10(j) factors, including the rationale for seeking or not seeking injunctive relief.

29. For the regions to prepare comprehensive 10(j) advice memos.

30. To use expedited hearings and for regions should strive to meet the 28-day target.

31. To maximize use of computer technology to enhance all aspects of casehandling.

32. To increase utilization of computer technology in docketing.

33. Wherever practical, to substitute electronic documents for paper documents.

34. To periodically review the "H" drive to delete unnecessary documents because it is available for all electronic documents and may become overloaded.

35. To maintain on the computer a list of names and addresses of the region's regular practitioners and frequent filers so that regional personnel can draw from that list when new charges are filed or correspondence needs to issue.

36. To have all casehandling manuals (ULP, representation, compliance and ALJ) with identifiable hyperlinks placed on an agency server so that all employees would have access to them from their computers.

37. To have all official memoranda and special distributions, with an appropriate index, available on a common drive for all employees.

38. To have a trained support staff employee keep track of all deferred cases and send the appropriate follow-up inquiries.

39. Consistent with the General Counsel's Impact Analysis Program, to utilize a team approach on large groups of related cases or on individual cases that have some combination of the following features: a) a number of complex issues; b) a large number of witnesses; c) voluminous documents to review; and d) high impact/high profile.

40. Periodic staff training, at least monthly. Simply stated, having a well-trained staff is a best practice.

41. To have a training coordinator in each region to keep resource materials up to date, and to develop training programs including those which make use of experts on the staff who have specific knowledge of specific areas.

42. To have a central repository of training materials that is organized and kept up to date and includes up-to-date samples.

43. To have a definite plan for training new agents.

44. To allow new agents to gain first hand experience by second chairing trials, sitting in on affidavits, and attending C case hearings.

45. For regions to maintain periodic contacts with the parties, normally every 90 days, regarding the status of a deferred case.

46. To utilize support staff members to send periodic letters inquiring about the status of deferred cases.

47. To have a single person within a region assigned the responsibility of monitoring the status of deferred cases.

48. To include in periodic letters to charging parties regarding deferred cases, a warning to the charging parties about their obligation to respond, combined with a deadline for responding.

49. For regions to use an automated phone answering service which includes an option of speaking with Board personnel.

50. To recognize significant contributions by individual staff members or teams.

ICR-4/90

INVESTIGATION COMPLETION REPORT AND PROPOSED DISPOSITION PROCEDURE

DATE:

TO: Daniel Silverman, Regional Director

CATEGORY:

FROM:

RE: See Attached Charge(s)

The investigation in the above case is complete. Check appropriate box:

[ ] The case turns essentially on factual issues-no significant legal issues are involved.

[ ] There are legal issues which have not been researched.

[ ] There are legal issues and substantial research has been conducted.

I recommend that the case be decided by:

[ ] Oral agenda ___ mins. Estimated length
[ ] FIR
[ ] Draft minute before agenda _____ Estimated length of Agenda
[ ] Other

The Recommendation will be:

[ ]Complaint **[ ]**Dismissal **[ ]**Collyer/Dubo **[ ]**Unsure

Comments:

Unavailability:

cc:

Attachment B